

**United States Department of Labor
Employees' Compensation Appeals Board**

T.D., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Cleveland, OH, Employer**

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**Docket No. 18-1190
Issued: March 11, 2019**

Appearances:

Alan J. Shapiro, Esq., for the appellant¹

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On May 21, 2018 appellant, through counsel, filed a timely appeal from an April 16, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.³

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that, following the April 16, 2018 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has met her burden of proof to establish bilateral upper extremity conditions causally related to the accepted factors of her federal employment.

FACTUAL HISTORY

On July 27, 2017 appellant, then a 43-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral wrist tendinitis and right wrist muscle strain while in the performance of duty. She noted that she first became aware of her alleged injury on July 21, 2017 and that she first realized that it was caused or aggravated by her federal employment duties on July 26, 2017. Appellant stopped work on July 21, 2017.

By development letter dated August 2, 2017, OWCP informed appellant that it had not received evidence in support of her claim. It advised her of the type of factual and medical evidence needed and provided a questionnaire for her completion. OWCP afforded appellant 30 days to submit the necessary evidence.

OWCP subsequently received an emergency room report dated July 25, 2017 from Dr. Robert Stanley Coleman, a physician Board-certified in internal medicine. Dr. Coleman related that appellant had informed him that she was pulling out mail bins at work five days prior when she felt tightness and pain in her right shoulder. He indicated that she denied trauma or a fall. Dr. Coleman diagnosed right trapezius muscle spasm and musculoskeletal pain.

OWCP also received several reports dated July 26, 2017 from Dr. Daniel A. Breitenbach, a specialist in internal medicine. In his initial report, Dr. Breitenbach noted that appellant indicated that on July 21, 2017 she was moving mail on the robot and started feeling sharp pain in her right hand, wrist, and arm. He advised that the next day she experienced sharp pain in her left hand and wrist, and right shoulder. Dr. Breitenbach diagnosed: bilateral hand synovitis and tenosynovitis; impingement syndrome of the right shoulder; and muscle, fascia, and tendon strain of the shoulder and upper arm. Additionally, he completed a July 26, 2017 attending physician's report (Form CA-20) on which he checked a box marked "yes" indicating that the diagnosed conditions were employment related. In duty status reports (Form CA-17) dated July 26 and August 2, 2017, Dr. Breitenbach opined that appellant was unable to work.

In a supplemental statement dated August 4, 2017, appellant explained that, on July 21, 2017, she was performing her regular assigned work duties when she felt a sharp pain in her right shoulder. She also noted that she saw her orthopedic surgeon who advised that her right hand was progressing well following recent right hand surgery.

In a report dated August 10, 2017, Dr. Breitenbach related that he saw appellant on July 26, and August 2 and 9, 2017. He explained that she experienced pain in her right shoulder, which occurred while she was working with a robot moving mail. Dr. Breitenbach diagnosed tenosynovitis of the right and left hands, impingement syndrome of the right shoulder, and right shoulder strain. He opined "[t]he right shoulder impingement and strain along with bilateral hand tendinitis was caused by the direct result of [appellant's] moving mail."

In a supplemental development letter dated August 24, 2017, OWCP requested that appellant describe her job duties in detail and specifically explain how operating the mail robot had caused pain in her right and left hands, and right shoulder. It also requested further information regarding her recent right hand surgery.

In an August 29, 2017 response, appellant explained that she worked with a robot machine that had 24 slots and held 28 to 34 trays. She explained that she pushed all-purpose containers weighing 600 to 800 pounds into and out of the robot. Appellant also confirmed that on February 8, 2017 she underwent a right carpal tunnel release surgery for a carpal tunnel condition that preexisted her federal employment.

By decision dated September 8, 2017, OWCP denied appellant's claim as the medical evidence submitted was insufficient to establish causal relationship between the claimed medical conditions and the accepted work factors.

On October 6, 2017 counsel requested a telephonic hearing before an OWCP hearing representative. During the hearing, held on February 26, 2018, appellant further described her employment duties and confirmed that she had returned to work on November 13, 2017 in a limited-duty position.

OWCP continued to receive reports from Dr. Breitenbach dated September 6, 2017 to March 27, 2018, in which he repeated his diagnoses of appellant's upper extremity conditions.

In a March 15, 2018 report, Dr. Breitenbach advised that appellant was injured on July 21, 2017 while "pulling on a cage that was struck and [appellant] jerked the case with both hands resulting in pain over both wrists at the radial aspects. [Appellant] also had pain over her right shoulder as well from the jerking motion." He related that she was initially seen in the emergency room, which assessed pain and muscle spasms. Dr. Breitenbach explained that he first saw appellant on July 26, 2017. He indicated that, at that time, she had bilateral positive Finkelstein findings over the wrists at the radial aspect. Dr. Breitenbach indicated that this was associated with tenosynovitis of the hand and wrists. He also found impingement of the right shoulder. Dr. Breitenbach opined that there was a "high degree of medical certainty that the incident with the cage on July 21, 2017 directly caused the tendon injuries in both wrists as well as her right shoulder impingement." He diagnosed right shoulder impingement, and bilateral hand tenosynovitis. Dr. Breitenbach also explained that appellant's previous carpal tunnel syndrome had nothing to do with these injuries as she had negative Tinel's and Phalen's findings.

In a March 16, 2018 report, Dr. Breitenbach noted that appellant was working on July 21, 2017 and injured her right shoulder while pulling a cage that was stuck. He opined that the jerking motion injured her right shoulder. Dr. Breitenbach explained that a recent magnetic resonance imaging scan of appellant's right shoulder demonstrated a small partial tear of the distal, anterior aspect of the supraspinatus tendon and mild impingement at the acromioclavicular joint of the right shoulder. He indicated that this would explain why she had pain in her right shoulder with abduction at 90 degrees. Dr. Breitenbach further indicated that it also explained appellant's positive Neer and Hawkins signs. He opined that "the jerking motion of pulling the cage directly caused the tear of the supraspinatus tendon and therefore the additional diagnosis of rotator cuff tear should be accepted."

By decision dated April 16, 2018, OWCP's hearing representative affirmed the September 8, 2017 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,⁴ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.

The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁷

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish bilateral upper extremity conditions causally related to the accepted factors of her federal employment.

Appellant was initially seen on July 25, 2017 by Dr. Coleman. Dr. Coleman provided a report which contained a history of injury and noted her right trapezius muscle spasm and pain.

⁴ *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *Victor J. Woodhams* 41 ECAB 345.

The Board has long held that pain⁸ and spasm⁹ are symptoms of conditions, not medical diagnoses. To establish a personal injury, the medical evidence of record must document a diagnosed condition and explain how that condition is causally related to the accepted employment factors. Lacking a firm diagnosis causally related to the accepted employment factors, Dr. Coleman's report is of limited probative value.¹⁰

OWCP also received several reports dated July 26, 2017 from Dr. Breitenbach. Dr. Breitenbach diagnosed: bilateral hand synovitis and tenosynovitis; impingement syndrome of the right shoulder; and muscle, fascia, and tendon strain of the right shoulder and upper arm level, but did not offer an opinion regarding causal relationship. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.¹¹ These reports, therefore, are insufficient to establish appellant's claim.

On a July 26, 2017 attending physician's form report, Dr. Breitenbach repeated his diagnoses and checked a box marked "yes" indicating that the diagnosed conditions were employment related. However, the checking of a box "yes" in a form report, without additional explanation or rationale, is insufficient to establish causal relationship.¹²

In a report dated August 10, 2017, Dr. Breitenbach repeated his diagnoses and opined that "[t]he right shoulder impingement and strain along with bilateral hand tendinitis was caused by the direct result of [appellant] moving mail." However, he did not explain how he arrived at this conclusion. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition/disability was related to employment factors.¹³ Therefore, this report of Dr. Breitenbach is insufficient to establish appellant's claim.

Dr. Breitenbach provided additional rationale on the issue of causal relationship in reports dated March 15 and 16, 2018. However, he referred to an incident that has not been alleged by appellant in this claim.¹⁴ Dr. Breitenbach explained that she was injured on July 21, 2017 while "pulling on a cage that was struck and jerked the case with both hands resulting in pain over both wrists at the radial aspects. [Appellant] also had pain over her right shoulder as well from the

⁸ *L.M.*, Docket No. 18-0473 (issued October 22, 2018).

⁹ *D.K.*, Docket No. 17-1186 (issued June 11, 2018).

¹⁰ See *K.V.*, Docket No. 18-0723 (issued November 9, 2018); *B.P.*, Docket No. 12-1345 (issued November 13, 2012); *C.F.*, Docket No. 08-1102 (issued October 2008).

¹¹ See *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

¹² See *M.O.*, Docket No. 18-1056 (issued November 6, 2018); *Deborah L. Beatty*, 54 ECAB 3234 (2003); *Barbara J. Williams*, 40 ECAB 649, 656 (1989).

¹³ See *Y.D.*, Docket No. 16-1896 (issued February 10, 2017) (finding that a report is of limited probative value regarding causal relationship if it does not contain medical rationale describing the relation between work factors and a diagnosed condition/disability).

¹⁴ Appellant has also filed a notice of traumatic injury relative to the alleged traumatic incident on July 21, 2017, which is not the subject of this appeal.

jerking motion.” He opined that there was a “high degree of medical certainty that the incident with the cage on July 21, 2017 directly caused the tendon injuries in both wrists as well as [appellant’s] right shoulder impingement.” The Board notes that, as Dr. Breitenbach’s report is based on an inaccurate history of injury, this opinion is insufficient to establish that the work incident caused the above noted diagnoses. It is well established that medical reports must be based on a complete and accurate factual and medical background, and medical opinions based on an incomplete or inaccurate history are of little probative value.¹⁵

OWCP received additional reports from Dr. Breitenbach dating from September 6, 2017 to March 27, 2018. However, as these reports also did not provide a rationalized opinion regarding causal relationship, they are also of no probative value.¹⁶

On appeal, counsel asserts that causal relationship was established in this case. However, for the above reasons set forth herein, the Board finds that appellant has not met her burden of proof to establish her claim.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish bilateral upper extremity conditions causally related to the accepted factors of her federal employment.

¹⁵ *J.M.*, Docket No. 17-1002 (issued August 22, 2017); *Douglas M. McQuaid*, 52 ECAB 382 (2001).

¹⁶ *See supra* note 14.

ORDER

IT IS HEREBY ORDERED THAT the April 16, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 11, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board